

OCT 02 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Michael N. Milby, Clerk

In Re ENRON CORPORATION
SECURITIES, DERIVATIVE &
"ERISA" LITIGATION,

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MDL 1446

MARK NEWBY, ET AL.,

Plaintiffs

VS.

ENRON CORPORATION, ET AL.,

Defendants.

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CIVIL ACTION NO. H-01-3624
CONSOLIDATED CASES

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, ET AL.,

Plaintiffs,

VS.

KENNETH L. LAY, ET AL.,

Defendants

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WASHINGTON STATE INVESTMENT
BOARD and EMPLOYER-TEAMSTERS
LOCAL NOS. 175 and 505 PENSION TRUST
FUND, ET AL.,

Plaintiffs,

VS.

KENNETH L. LAY, ET AL.,

Defendants

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PAMELA M. TITTLE, on behalf of
herself and a class of persons
similarly situated, ET AL.,

Plaintiffs

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VS.	§	CIVIL ACTION NO. H-01-3913
	§	CONSOLIDATED CASES
ENRON CORP., an Oregon	§	
Corporation, ET AL.,	§	
	§	
Defendants.	§	

ORDER

Pending before the Court are Objectors RINIS Travel Service, Inc. Profit Sharing Trust U.A. 6-1-1989 and Michael J. Rinis, IRRA's motion for leave to file preliminary objections to the proposed stipulation of settlement (instrument #1703 in *Newby*) and Settlement Class Members James H. Allen, Jr., Burton W. Carlson, Jr., Michael T. De Freece, Marcia A. De Freece, Andrew E. Krinock, Phyllis A. Krinock, Partcom Limited Partnership, Reed Partners, L.P. (f/k/a Reed Family Ltd. Partnership), F. Walker Tucei, June P. Tucei, Roman H. Uhing, Alvera A. Uhing, and Viets Family Associates, LLP's (collectively "the Objecting Class Members") motion for permission to intervene for the purpose of objecting to the proposed partial settlement (#1686 in *Newby*). In the same vein, the Court has received copies of letters sent also to counsel for Plaintiffs voicing objections to the proposed settlement.

A Stipulation of Partial Settlement (#1554 in *Newby*) involving Plaintiffs in the above referenced Actions and Arthur Andersen Worldwide was filed on July 9, 2003 and preliminarily approved by the Court (#1583 in *Newby*) at a hearing on July 24, 2003. The final Fairness Hearing is set on October 23, 2003 at 10:00 a.m. Accordingly, the Court

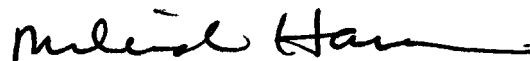
ORDERS that counsel for Plaintiffs shall file responses to these motions within five days of entry of this order.

Furthermore the Objecting Class Members have cited *Loran v. Furr's/Bishop's Inc.*, 988 F.2d 554, 554 (5th Cir. 1993), holding that a class member who has not moved to intervene does

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not have standing to appeal because he is not a “named party” to the suit. The majority of the federal circuit courts of appeals have reached the same conclusion. *In re Brand Name Prescription Drugs Antitrust Litigation*, 115 F.3d 456, 457-58, *rev’d on other grounds*, 123 F.3d 599 (7th Cir. 1997)(*en banc*), *cert. denied sub nom. Abbott Laboratories v. Huggins*, 522 U.S. 1153 (1998) ; *Shults v. Champion International Corp.*, 35 F.3d 1056, 1061 (6th Cir. 1994); *Gottlieb v. Wiles*, 11 F.3d 1004, 1009 (10th Cir. 1993); *Croyden Assocs. v. Alleco, Inc.*, 969 F.2d 675, 679 (8th Cir. 1992), *cert. denied*, 507 U.S. 908 (1993); *Guthrie v. Evans*, 815 F.2d 626, 627 (11th Cir. 1987). The Objecting Class Plaintiffs have noted that it is unclear whether that rule has been abrogated by *Devlin v. Scardelletti*, 536 U.S. 1 (2002), holding that “nonnamed class members . . . who have objected in a timely manner to approval of the settlement at the fairness hearing have the power to bring an appeal without first intervening,” because the Supreme Court case dealt with a mandatory rather than an opt-out class action. *See In re Brand Name*, 115 F.3d at 457 (“having opted out of the class, they were no longer members of the class and so in no sense were parties”), *citing Marino v. Ortiz*, 484 U.S. 301, 304 (1988)(*per curiam*)(holding that to have standing to appeal, nonparties must move to intervene). Plaintiffs’ counsel should inform any objectors made know to counsel that to insure that their appellate rights are protected, the objectors should file appropriate motions to intervene.

SIGNED at Houston, Texas, this 1st day of October, 2003.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE